



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 6, 1996

Mr. Kevin W. Kapitan
Police Legal Advisor
The City of Fort Worth
350 West Belknap Street
Fort Worth, Texas 76102

OR96-1601

Dear Mr. Kapitan:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100426.

The City of Fort Worth (the "city") received a request for information from an attorney who is making the request on behalf of his client, a former police officer. The request is for records concerning the former police officer. You contend that the information at issue is excepted from disclosure pursuant to section 552.101, 552.108, and 552.111.

We note initially that there is polygraph information in the records submitted to this office. Access to the polygraph information at issue is governed by section 19A of article 4413(29cc), V.T.C.S, rather than chapter 552 of the Government Code. Section 19A provides:

(a) Except as provided by Subsection (c) of this section, a licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may not disclose to another person information acquired from a polygraph examination.

(b) Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person, firm, corporation, partnership, business entity, or governmental agency that requested the examination;

(3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;

(4) other polygraph examiners in private consultation, all of whom will adhere to this section; or

(5) others as may be required by due process of law.

(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

(e) The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.

Thus, the former officer has a right of access to his own polygraph examination information.

We also note that Fort Worth is subject to the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the maintenance of a civil service file and what may be kept in that file:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Section 143.089(e) states that a police officer "is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file." Section 143.089(e) of the Local Government Code thus lays out a system of *mandatory access* to civil service records that prevails over the chapter 552 exceptions to disclosure. *See* Open Records Decision No. 598 (1991) at 3-4 (provisions of Government Code 552 do not prevail over special rights of access to records).

However, information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in a police department's internal file, as provided in section 143.089(g):

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

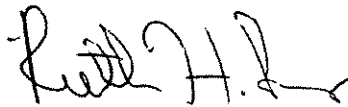
The Fort Worth police department thus may keep information in this separate, internal file for its own use. The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946

(Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file. The court determined that section 143.089(g) makes records kept in a department's internal file confidential. A request for information in the internal file must be referred to the civil service director or his designee. *See City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied).

The former officer is entitled to information about his own polygraph examination. As to the other records at issue, you do not indicate whether these records are part of the former officers' civil service file or the police department's internal file. If these records are part of the former officer's civil service file they must be released to the requestor in accordance with the mandatory access provision of section 143.089(e).¹ Documents in the police department's internal file are confidential and must be withheld from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/ch

Ref.: ID# 100426

Enclosures: Submitted documents

cc: Mr. Richard W. Carter
Assistant General Counsel
CLEAT
1117 San Marcos
Arlington, Texas 76012
(w/o enclosures)

¹ There are social security numbers of other officers in the documents submitted to this office. We note that if the social security numbers at issue are contained in the police department's internal file, they may not be disclosed. However, if the social security numbers at issue are contained in the civil service file, they must be withheld from disclosure if they are made confidential by federal law, as you assert. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I)